

HOUSE BILL NO. 510

INTRODUCED BY P. CLARK

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING IMPRISONMENT AS A PUNISHMENT FOR DANGEROUS DRUG POSSESSION OFFENSES AND SUBSTITUTING HOME ARREST AND OTHER SENTENCING ALTERNATIVES FOR IMPRISONMENT; REQUIRING PERSONS CONVICTED OF DANGEROUS DRUG FELONY AND MISDEMEANOR OFFENSES WHO ARE SENTENCED TO TREATMENT TO PAY THE COST OF TREATMENT IF THEY ARE ABLE TO DO SO; AND AMENDING SECTIONS 41-5-206, 45-9-102, 45-9-121, 45-9-202, 46-18-205, AND 46-18-231, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

- (v) robbery as defined in 45-5-401;
- (vi) burglary or aggravated burglary as defined in 45-6-204;
- (vii) aggravated kidnapping as defined in 45-5-303;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal distribution of dangerous drugs as defined in 45-9-101;
- (x) criminal possession of dangerous drugs as defined in ~~45-9-102(4) and (5)~~ 45-9-102(5) and (6);
- (xi) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;
- (xiv) escape as defined in 45-7-306;
- (xv) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xiv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

- (a) a youth court proceeding and disposition will serve the interests of community protection;
- (b) that the nature of the offense does not warrant prosecution in district court; and
- (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) (a) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish ~~is, for the first offense, guilty of a misdemeanor and~~ shall be punished by:

(i) a fine of not less than \$100 or more than \$500 ~~and;~~

(ii) ~~by imprisonment in the county jail~~ home arrest under Title 46, chapter 18, part 10, for not more than 6 months, one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or a combination of home arrest for not more than 6 months and one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e);
or

(iii) both of the penalties provided for in subsections (2)(a)(i) and (2)(a)(ii).

1 (b) The minimum fine must be imposed as a condition of a suspended or deferred sentence.

2 (3) A person convicted of a second or subsequent offense under this subsection (2) is punishable by:

3 (a) a fine not to exceed \$1,000; or

4 (b) ~~imprisonment in the county jail~~ home arrest under Title 46, chapter 18, part 10, for a term not to
5 exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment, one
6 or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or a combination of home arrest for not
7 more than 1 year and one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e); or

8 (c) both of the penalties provided for in subsections (3)(a) and (3)(b).

9 ~~(3)(4)~~ A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the
10 first offense, guilty of a misdemeanor and shall be punished by:

11 (a) a fine of not less than \$100 or more than \$500; or

12 (b) ~~by imprisonment in the county jail~~ home arrest under Title 46, chapter 18, part 10, for not more than
13 6 months, or both one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or a combination
14 of home arrest for not more than 6 months and one or more of the alternatives specified in 45-9-202(2)(a)
15 through (2)(e); or

16 (c) both of the penalties provided for in subsections (4)(a) and (4)(b).

17 ~~(4)(5)~~ A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be
18 punished by:

19 (a) ~~imprisoned in the state prison~~ home arrest under Title 46, chapter 18, part 10, for a term of not less
20 than 2 years or more than 5 years, one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or
21 a combination of home arrest for a term of not less than 2 years or more than 5 years and one or more of the
22 alternatives specified in 45-9-202(2)(a) through (2)(e); and

23 (b) ~~may be fined not more than a fine not to exceed \$50,000, except as provided in 46-18-222; or~~

24 (c) both of the penalties provided for in subsections (5)(a) and (5)(b).

25 ~~(5)(6)~~ A person convicted of criminal possession of dangerous drugs not otherwise provided for in
26 subsection (2), (3), or (4) shall be punished by:

27 (a) ~~imprisoned in the state prison~~ home arrest under Title 46, chapter 18, part 10, for a term not to
28 exceed 5 years, one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or a combination of
29 home arrest for a term not to exceed 5 years and one or more of the alternatives specified in 45-9-202(2)(a)
30 through (2)(e); or

1 ~~(b) be fined an amount~~ a fine not to exceed \$50,000; or

2 ~~(c) both of the penalties provided for in subsections (6)(a) and (6)(b).~~

3 ~~(6)(7)~~ A person convicted of a first violation under this section is presumed to be entitled to a deferred
4 imposition of any sentence of ~~imprisonment~~ home arrest.

5 ~~(7)(8)~~ Ultimate users and practitioners and agents under their supervision acting in the course of a
6 professional practice, as defined by 50-32-101, are exempt from this section."

7
8 **Section 3.** Section 45-9-121, MCA, is amended to read:

9 **"45-9-121. Criminal possession of toxic substances -- penalty.** (1) A person commits the offense
10 of criminal possession of a toxic substance if ~~he~~ the person inhales or ingests or possesses with the purpose
11 to inhale or ingest, for the purpose of altering ~~his~~ the person's mental or physical state, any substance with toxic
12 effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail
13 polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

14 (2) The provisions of subsection (1) do not apply to a bona fide institution of higher education
15 conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or
16 state agency.

17 (3) A person convicted under this section shall be punished by:

18 ~~(a) imprisoned in the county jail~~ home arrest under Title 46, chapter 18, part 10, for a term not to exceed
19 6 months, one or more of the alternatives specified in 45-9-202(2)(a) through (2)(e), or a combination of home
20 arrest for a term not to exceed 6 months and one or more of the alternatives specified in 45-9-202(2)(a) through
21 (2)(e); or

22 ~~(b) be fined an amount~~ a fine not to exceed \$500; or

23 ~~(c) both of the penalties provided for in subsections (3)(a) and (3)(b).~~

24 (4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age."
25

26 **Section 4.** Section 45-9-202, MCA, is amended to read:

27 **"45-9-202. Alternative sentencing authority.** (1) A person convicted of a dangerous drug felony
28 offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in
29 subsection (2).

30 (2) If the court determines, either from the face of the record or from a presentence investigation and

1 report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or
2 deferred sentence, impose one or more of the following alternatives:

3 (a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that
4 specify a fine as part of the penalty or \$1,000 for those offenses that do not specify a fine;

5 (b) commitment to a residential drug treatment facility licensed and approved by the state for
6 rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility
7 and not more than 1 year, with the defendant paying the costs of the defendant's treatment and stay in the facility
8 if found able to do so by the court;

9 (c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug
10 education program, with the defendant paying the costs of participation in the program if found able to do so by
11 the court and with compliance to be monitored by the probation and parole bureau of the department of
12 corrections based upon information provided by the treatment or education program;

13 (d) if recommended by the probation and parole bureau, placement in a program of intensive probation
14 that requires, at a minimum, that the defendant comply with all of the following conditions:

15 (i) maintain employment or full-time student status at an approved school, making progress satisfactory
16 to the probation officer, or be involved in supervised job searches and community service work designated by
17 the probation officer;

18 (ii) pay probation supervision fees through the clerk of the district court of not less than \$50 per month
19 to be deposited in an account in the state special revenue fund to the credit of the department of corrections;

20 (iii) find a place to reside approved by the probation officer that may not be changed without the officer's
21 approval;

22 (iv) remain at the residence at all times except to go to work, to attend school, or to perform community
23 service or as otherwise specifically allowed by the probation officer;

24 (v) remain drug free and submit to drug and alcohol tests administered randomly not less than once
25 each month by or under supervision of the probation officer;

26 (vi) perform not less than 10 hours of community service each month as approved by the probation
27 officer, except that full-time students may be exempted or required to perform fewer hours of community service;

28 (vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program, with
29 the defendant paying the costs of participation in the program if found able to do so by the court; and

30 (viii) comply with any other conditions imposed by the court to meet the needs of the community and the

1 defendant;

2 (e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject
3 to the following terms and conditions:

4 (i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for
5 6 months;

6 (ii) upon the second conviction, the driver's license must be revoked for 1 year;

7 (iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years."
8

9 **Section 5.** Section 46-18-205, MCA, is amended to read:

10 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
11 victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment
12 imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not
13 apply to the first 30 days of the imprisonment:

14 (a) 45-5-503, sexual intercourse without consent;

15 (b) 45-5-504, indecent exposure;

16 (c) 45-5-505, deviate sexual conduct; or

17 (d) 45-5-507, incest.

18 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a
19 sentence of imprisonment imposed under the following sections may not be deferred or suspended:

20 (a) 45-5-103(4), mitigated deliberate homicide;

21 (b) 45-5-202, aggravated assault;

22 (c) 45-5-302(2), kidnapping;

23 (d) 45-5-303(2), aggravated kidnapping;

24 (e) 45-5-401(2), robbery;

25 (f) 45-5-502(3), sexual assault;

26 (g) 45-5-503(2) and (3), sexual intercourse without consent;

27 (h) 45-5-603, aggravated promotion of prostitution;

28 (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs; and

29 ~~(j) 45-9-102(4), criminal possession of dangerous drugs; and~~

30 ~~(k)(j)~~ 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended."

Section 6. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

- (i) 45-5-103(4), mitigated deliberate homicide;
- (ii) 45-5-202, aggravated assault;
- (iii) 45-5-213, assault with a weapon;
- (iv) 45-5-302(2), kidnapping;
- (v) 45-5-303(2), aggravated kidnapping;
- (vi) 45-5-401(2), robbery;
- (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;
- (viii) 45-5-503(2) and (3), sexual intercourse without consent;
- (ix) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;
- (x) 45-9-102(4)(5), criminal possession of an opiate;
- (xi) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and
- (xii) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into

1 account the nature of the crime committed, the financial resources of the offender, and the nature of the burden
2 that payment of the fine will impose.

3 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing
4 judge not to exceed \$50,000."

5 - END -